

Exhibit 43

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

COPY

MIYANO MACHINERY USA INC.,)
)
Plaintiff,)
)
-vs-) CIVIL ACTION
)
MIYANOHITEC MACHINERY,)
INC., THOMAS ("TOM") MIYANO)
a/k/a TOSHIHARU MIYANO and)
STEVEN MIYANO, a/k/a)
SHIGEMORI MIYANO,)
)
Defendant.)

DEPOSITION OF HENRY MARCHIONNE

MARCH 3, 2008 - 10:04 A.M.

The deposition of HENRY MARCHIONNE,
taken pursuant to the Rules of Civil Procedure
for the United States District Courts pertaining
to the taking of depositions, taken before Jerry
Satterlee, a Certified Shorthand Reporter within
and for the State of Illinois, at 77 West
Washington Street, Suite 900, Chicago, Illinois.

1 It is not a different name?

2 A. Same.

3 Q. Same name.

4 What is your view about -- as a
5 businessman, strictly speaking as a businessman.
6 I don't want a legal conclusion.

7 As a businessman, do you think that
8 someone should be allowed to use their last name
9 as part of their business name?

10 MR. MANZO: Objection.

11 BY MR. BAKER:

12 Q. Go ahead and answer the question.

13 A. Yes.

14 Q. Is there any particular reason that
15 Tom Miyano should not be allowed to use his last
16 name in connection with his business today?

17 A. Yes.

18 Q. What is that?

19 A. Because it is the name of the
20 company, Miyano Machinery USA.

21 Q. Any other reasons?

22 A. What do you mean by any other
23 reasons?

24 Q. Literally, is there any other reason

1 that comes to you sitting here today that Tom
2 Miyano should not be allowed to use his own family
3 name as part of his business?

4 A. Yes.

5 Q. What is that?

6 A. Because I feel it is infringing on
7 our thirty some years of building up a goodwill
8 and reputation, a lot of hard work. Takes long
9 years to establish a company in any name.
10 Someone else to use the same name, it can be
11 mistaken, it can hurt us, and I think it is
12 unfair competition.

13 Q. Even if it is that guy's own name and
14 it was his hard work as you testified earlier that
15 was part of building that goodwill?

16 A. Yes.

17 Q. Any other reasons?

18 A. Other than what I just told you, you
19 know. I think it would harm us, seriously harm
20 us because that is one of our main assets, the
21 name and the trademarks.

22 Q. The Miyano name is one of your main
23 assets?

24 You have to answer out loud. That is

1 the only reason I ask again because the court
2 reporter can't take down --

3 A. What did you say previously?

4 Q. The Miyano family name is one of your
5 company's assets, is that what you are saying?

6 A. The name, yes.

7 Q. Has Miyano Machinery USA Inc. always
8 had the same name during your time there?

9 A. No.

10 Q. What other names has it had during
11 your time there?

12 A. Miyano USA in parentheses with a dot
13 after the U, S and A, and then it was changed to
14 Miyano USA without the parentheses and without
15 the dots. Then it was changed to Miyano
16 Machinery Inc., and -- I think there were three,
17 but always the same name. Miyano Machinery.

18 Q. And just before it became Miyano
19 Machinery USA Inc., as it is today, the company
20 was called Miyano Machinery Inc., is that correct?

21 A. Yes.

22 Q. Who made the decision to change the
23 name from Miyano Machinery Inc., to Miyano
24 Machinery USA Inc.?

1 correct?

2 A. Yes.

3 Q. When was the first time that you
4 learned that Tom Miyano was working -- Let me
5 withdraw that.

6 When was the first time that you
7 learned about MiyanoHitec?

8 A. I think it was 2006.

9 Q. Approximately what month?

10 A. Maybe in the middle of the year.

11 Maybe May, something like that. I am not sure.

12 Q. Was it before the IMTS happened in
13 2006?

14 A. Yes, I think so. Yes.

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REDACTED

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13 English by the way or just Japanese?

14 A. It would be in English, too.

15 Q. So if we ask Mr. Manzo eventually for
16 those documents, he would be in a position to
17 produce them to us, is that correct?

18 A. Yes.

19 Q. So you learned of MiyanoHitec in May
20 of 2006 and what did you do about it? What did
21 you do about it when you learned about
22 MiyanoHitec? What was your first reaction?

23 A. Nothing. I didn't react to it.

24 Q. In May of 2006 were you concerned that

1 the name Miyano was associated with MiyanoHitec?

2 A. Well, when I first heard of it, it
3 was Hitec, Hitec Machinery International, I
4 believe, when I first heard it. Okay.

5 Q. When you testified you first heard of
6 MiyanoHitec in 2006, was that inaccurate?

7 A. I had said -- You asked me when and I
8 said maybe in 2006.

9 Q. Right.

10 A. When I did hear of it, all it was was
11 Hitec. If I am wrong, it will be the date or the
12 year or something, but not the name.

13 Q. No problem. But what I am trying to
14 figure out is when was the first time you remember
15 hearing the Miyano family name associated with
16 Hitec so that it became MiyanoHitec?

17 A. I think in the early part of '07.
18 2007.

19 Q. When you say early 2007, could it have
20 been late 2006?

21 A. Possible. Yes, possible.

22 Q. When you first saw the Miyano family
23 name associated with MiyanoHitec, what was your
24 reaction?

1 A. Well, I immediately thought it was
2 going to be a problem for us.

3 Q. What did you do about it?

4 A. Well, I guess Miyano Machinery had
5 also found out about it. Okay.

6 Q. Okay.

7 A. And so they were going to -- and they
8 were talking about it, what they were going to do
9 about it.

10 Q. Who is "they"?

11 A. And they asked me --

12 Q. Who is "they"?

13 A. The executives of Miyano USA and
14 Miyano-Japan, of course. They found out about it
15 and they are concerned.

16 Q. Who specifically?

17 A. The president of Miyano, John Saito.

18 Q. So Saito knew in either late '06 or
19 early '07 that the Miyano name was associated with
20 MiyanoHitec, is that accurate?

21 A. In '06 he knew about Hitec, John
22 Saito. And he must have found out about
23 MiyanoHitec in the early part of '07. And then
24 that is when he said -- He came here on a visit

1 came to the USA and he asked me, and I said,
2 well, it would be a problem because he used the
3 name, especially the following year was going to
4 be the IMTS, which is this year, and I said that
5 will cause us problems because they will wonder
6 if that is part of Miyano USA. So I think we
7 have to address it. And they asked me What do
8 you think? I said I think it will cause us a
9 serious problem, definitely.

10 Q. Do you still think that even though
11 MiyanoHitec specifically says it has no
12 relationship to Miyano USA?

13 A. Yes, I do because -- Yes, I do.

14 Q. Why is that?

15 A. Well, you see the name -- For
16 instance, I can give you an example.

17 Q. Please, go ahead.

18 A. I called up AMT and asked a question
19 about charges for the show and that, and I said
20 it has got to do with Miyano Machinery's booth
21 80-717, and she says, "Oh, let me bring it up,"
22 and she said, "Oh, you are MiyanoHitec," and I
23 said, "No, I am not MiyanoHitec." So the name
24 will direct people to him as well as to us.

1 Q. Now, was this person trying to buy
2 machine tools?

3 A. No. This is one of the
4 representatives at the AMT headquarters where
5 they arrange for the show.

6 Q. She is responsible for organizing a
7 show?

8 A. Yes.

9 Q. She is not a machine tool vendor?

10 A. No.

11 Q. She doesn't purchase machine tools?

12 A. No. But we have had people ask us
13 about that, too.

14 Q. Like who?

15 A. Customers.

16 Q. Which ones?

17 A. I don't know. That I am working on.

18 I am trying to make a list of these because I
19 know it will have a direct effect on us.

20 Q. You know it, but, yet, you don't sit
21 here today with any knowledge of a particular
22 customer who has had any problem with it, correct?

23 A. Yes, that is correct.

24 Q. So sitting here today on March 3rd,

1 with Miyano, that can hurt our reputation.

2 And, secondly, if it is a low price,
3 which I am sure it will be because of labor costs
4 in India compared to labor costs in Japan or
5 anywhere else, he will be underselling us using
6 the same name, which will be very competitive.

7 BY MR. MANZO:

8 Q. Mr. Marchionne, how long have you been
9 in the business of metal turning machines?

10 A. Over fifty some years, about fifty --
11 Yeah, fifty-three years, something like that.

12 Q. Did you have any experience prior to
13 MMU in turning machines?

14 A. Yes.

15 Q. Just identify that for us if you
16 would.

17 A. I worked in a machine shop, grammar
18 school, to pay my tuition. I worked in a machine
19 shop in high school to get through high school.
20 I worked at two other manufacturers. One is
21 Wendell Manufacturing. I worked in die casting.
22 I joined Dynamic in 1950.

23 I held every job in the machine shop.
24 I am a toolmaker. I am a lifetime member of the

1 Society of Manufacturing Engineers. I have a lot
2 of experience in machinery and machine tools.
3 Not only used them and ran them, but trained
4 people.

5 And that is my expertise. And that
6 is why I think Miyano uses me because I am a good
7 tool to sell their product and show people why
8 they should buy Miyano and not buy something
9 else. I can point out the qualities of the
10 machine. So when I talk about reputation and
11 that, I know what I am talking about because I
12 know what it takes to sell something that is
13 superior to something else. And price is very
14 important, and, of course, Miyano has to be very
15 careful. That is why I am concerned about
16 MiyanoHitec. He is going to be infringing on our
17 market. It will hurt us.

18 And I know -- I know you say I am
19 just speculating, but if you see the same name
20 and they see Tom Miyano, they are not going to
21 ignore it and they know him. So you say I am
22 just guessing. Wouldn't you go over to say hello
23 to Tom if you knew him and he will try to push
24 his product on you. So I know it will help him.

1 I don't think that it is fair that
2 Miyano with some 34 to 36 years of building up a
3 reputation and then he is going to use the name
4 and steal part of it from us.

5 MR. MANZO: Thank you. Nothing further.

6 MR. BAKER: Just a couple of followups.

7 THE WITNESS: Sure.

8 FURTHER EXAMINATION

9 BY MR. BAKER:

10 Q. Have you ever been to India?

11 A. No.

12 Q. Do you know anything about the
13 manufacture of machine tools in India?

14 A. No. I have heard a little bit about
15 it.

16 Q. But you don't know anything?

17 A. I don't know personally, no.

18 Q. So you have no way of saying whether
19 or not a machine tool built in India would be of a
20 lesser or higher quality than one built anywhere
21 else?

22 A. No. What I base it on, so you
23 understand that I am not just throwing something
24 out there, every machine tool that ever hit the

1 market from wherever never starts out as a
2 prototype. Okay. It will always have problems.
3 Even automobiles. You know, automobiles, you
4 know what I mean. And that little phase, whether
5 it is just a little bit or a lot, it will affect
6 us. I know it definitely.

7 Q. But you don't know whether or not the
8 machine tools built in India will be of a higher
9 or lower quality than those of Miyano, correct?

10 A. No, I am only guessing, yes.

11 Q. As you say, you don't know what the
12 quality will be of the machine tools that
13 MiyanoHitec will sell because they don't even have
14 any on the market?

15 A. They don't so I couldn't.

16 Q. So there is no way for you to evaluate
17 whether or not MiyanoHitec products are of a
18 higher or a lower quality than those of Miyano
19 USA, correct?

20 A. At this point, no.

21 Q. There is no way of you knowing?

22 A. No.

23 Q. Literally?

24 A. No.